IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5156 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DY EXECUTIVE ENGINEER ROAD & BUILIDING DEPARTMENT

Versus

MUKESH A MAJMUDAR

Appearance:

1. Special Civil Application No. 5156 of 1997

Mr. Mahendra K. Patel for

MR KV GADHIA for Petitioner No. 1

MR NILESH A PANDYA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 18/10/2004

ORAL JUDGEMENT

Heard learned advocate Mr. Patel for the

petitioner and Mr. Pandya for the respondent. The respondent was working with the petitioner w.e.f.25th July, 1981 and his service was terminated on 23.9.1983. The respondent has challenged the order of termination by raising an industrial dispute before the labour court, Baroda in Reference No. 203 of 1984 which was decided by the labour court concerned on 5th May, 1990. Under the said award, the labour court set aside the order of termination and granted reinstatement with continuity of service with 50 per cent of the back wages for the intervening period. This award was made by the labour court in absence of the petitioner since no reply was filed by the petitioner and no oral or documentary evidence was produced by the petitioner before the labour court though served. Then, according to the submission made by the learned advocate Mr. Patel, the respondent was reinstated in service on the basis of the said award on 10.11.1982 but thereafter, immediately, he left the job without any prior permission from the petitioner. Thereafter, the respondent filed recovery application no. 57 of 1991 claiming benefits as per the earlier award and that was decided by the labour court Baroda on 22nd December, 1992 wherein the labour court granted 50% back wages for the period from 21st September, 1983 to 7th July, 1990 and for the period from 8th July, 1990 till 31st March, 1991, full wages were granted as per the calculation made vide Exh. 25 which comes to Rs.48889.00. Thereafter, the respondent filed another recovery application no. 354 of 1993 before the labour court Baroda and the labour court passed order on 17th April, 1997 and granted amount of wages for the period from 1st April, 1991 to 31st March, 1993 which comes to Rs.44,400.00. It is necessary to note that in both the recovery application inspite of the notice received by the petitioner, no appearance was filed by the petitioner and no one had remained present before the labour court to defend the case of the petitioner. Therefore, both the orders of the labour court were ex parte order against the petitioner.

Further, it is required to be noted that the award of the labour court dated 5th May, 1990 was challenged by the petitioner before this court by filing special civil application 14541 of 1993 wherein this court directed the petitioner to avail alternative remedy available under Rule 26A of the Industrial Disputes (Gujarat) Rules, 1966 by order dated 25th March, 1994. Learned advocate Mr. Pandya appearing for the workman submits that after the said petition was disposed of by this court, the petitioner has not filed any application before the labour court under Rule 26A of the ID

(Gujarat) Rules, 1966 for setting aside the ex parte award dated 5.5.1990. Similarly, no such application has also been filed by the petitioner against two ex parte orders passed in the aforesaid recovery application by the labour court. Thus, all the three proceedings remained ex parte, not challenged by the petitioner and no contest was made by the petitioner and, therefore, ultimately, the labour court, considering the evidence of the workman, passed appropriate orders in absence of the petitioner.

Learned advocate Mr. Patel for the petitioner submits taht the labour court has committed error in granting wages subsequent to the period from 10.11.1982. This contention cannot be considered by this court on the ground that the claim of the workman was not contested by the petitioner before the labour court in award as well as two orders in recovery applications. These facts were not brought to the notice of the labour court by the petitioner. Therefore, considering the fact that all the three proceedigns remained ex parte and not opposed by the petitioner at anyst age before the labour court and not challenged by the petitioner and also considering the evidence of the workman, labour court was right inp assing the aw ard as well as two orders in recovery application. In these circumstances, the labour court has not committed any error in passing two orders in recovery applications based on the award dated 5.5.1990. According to my opinion, both the orders are based on the award dated 5.5.1990 means pre existing right of the workman to receive back wages for intervening period as directed in the award dated 5.5.1990 and full wages from the date of award till the date of reinstatement which was rightly granted by the labour court. In view of the award dated 5.5.1990, the respondent was having pre existing right to receive back wages for the intervening period as per the award and full wages from the date of the award which was denied and, therefore, there is no substance in this petition and, therefore, present petition is dismissed. Rule is discharged. Interim relief is vacated. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas